




COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**MEMORANDUM**

**TO:** LAW ENFORCEMENT PERSONNEL  
COMMONWEALTH'S AND COUNTY ATTORNEYS  
COUNTY CLERKS

**FROM:** JACK CONWAY   
KENTUCKY ATTORNEY GENERAL

**DATE:** October 21, 2008

**SUBJECT:** Voter T-Shirts, Buttons and Other Permissible Personal Attire

The Office of the Attorney General has received inquiries regarding whether the wearing of a political or campaign t-shirt, button or other similar personal attire, by a voter in the polling place on Election Day, will constitute criminal "electioneering," as defined by KRS 117.235. The issue has been of great public concern and interest, as evidenced by an article in the *Louisville Courier-Journal* on October 17, 2008 and recent National Public Radio coverage. While the Office of the Attorney General does not wish to dictate to local law enforcement and prosecutorial officials those matters which are uniquely the concern of local officials, it is felt that this clarification would be of assistance to all concerned.

In short, it is the conclusion of the Attorney General's Office that its previous opinion in OAG 92-73 answers this question.

The first amendment prohibits enforcement of the [electioneering] statute to prohibit voters from wearing items such as buttons or shirts that solicit a vote for or against a candidate or issue.

This answer is consistent with the recent written directive from the State Board of Elections. (SBE Memo 08-69, 9/24/08).

There are several practical considerations ancillary to this conclusion:

- 1) No person can be prevented from voting merely for wearing a campaign t-shirt, button or other similar personal attire.
- 2) Any person who unlawfully prevents or attempts to prevent a voter from casting a ballot can be charged with a Class D felony. KRS 119.155.



- 3) Ordinarily, precinct election officers are permitted the authority to, upon the observation of an act of "electioneering," first, warn the voter engaged to cease; and second, if the voter does not cease, report the action to law enforcement, and "maintain law and order." KRS 117.235. Given that the conduct described above is protected First Amendment expression, a poll worker would not have grounds to take these steps against a voter solely for the act of wearing a campaign t-shirt, button or other similar personal attire.
- 4) Ordinarily, a peace officer may perform an arrest for a misdemeanor committed in his presence. Because the mere act of wearing a particular t-shirt or button at the polling place cannot be enforced as criminal electioneering, then no peace officer can arrest for this action alone.
- 5) The laying of misdemeanor charges against an individual can occur, of course, by a charge other than arrest, pursuant to RCr 2, upon the sworn complaint of any individual (often referred to as "swearing a warrant"). Given the above conclusion, it would be improper for a voter to be so charged solely for wearing a campaign t-shirt, button or other such personal attire at the election polling place.
- 6) The precinct sheriff has the duty, under law, to note all election law violations in the precinct sheriff's post-election report. KRS 117.355. Given that the wearing of a campaign t-shirt, button or other similar personal attire, alone, does not constitute a violation of election laws, any act of intervening with the voter for this purpose or of recording the voter's identity solely for wearing the attire, would also appear to be improper.

The Attorney General, as chief law officer of the Commonwealth, is given the authority and duty, under law, to issue to "all state officers, departments, commissions and agencies" his written opinion "touching any of their official duties." KRS 15.020. In April, 1992, the Attorney General was asked by the Fayette County Clerk to issue an opinion regarding two questions related to criminal electioneering: (1) whether the wearing of a campaign button or t-shirt by a *precinct election officer* at the voting place was punishable as criminal electioneering; and (2) whether the same conduct by a *voter* constituted criminal electioneering.

The Opinion issued as OAG 92-73 analyzed this matter, and decided that such action was enforceable against precinct election officers, but not against voters. The Opinion has not been overruled, withdrawn or revised. The opinion appears to have been relied upon by state agencies like the State Board of Elections (see SBE Memo 08-69, 9/24/08) as well as members of the public via media coverage.

The number for the Attorney General's Election Fraud Hotline is 1-800-328-VOTE (800-328-8683). The hotline is available throughout the year during normal business hours. On November 4, 2008, calls will be received from 6a.m. EDT until 7p.m. EDT.